

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

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JANET V.,

Plaintiff,

Civil Action No.  
1:19-CV-0466 (DEP)

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

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APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF

DENNIS KENNY LAW FIRM  
288 North Plank Rd.  
Newburgh, NY 12550

JOSEPHINE GOTTESMAN, ESQ.

FOR DEFENDANT

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United States Attorney  
P.O. Box 7198  
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KEVIN PARRINGTON, ESQ.  
Special Assistant U.S. Attorney

DAVID E. PEEBLES  
U.S. MAGISTRATE JUDGE

ORDER

Currently pending before the court in this action, in which plaintiff seeks judicial review of an adverse administrative determination by the

Commissioner of Social Security, pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3), are cross-motions for judgment on the pleadings.<sup>1</sup> Oral argument was heard in connection with those motions on May 6, 2020, during a telephone conference conducted on the record. At the close of argument I issued a bench decision in which, after applying the requisite deferential review standard, I found that the Commissioner's determination resulted from the application of proper legal principles and is supported by substantial evidence, providing further detail regarding my reasoning and addressing the specific issues raised by the plaintiff in this appeal.

After due deliberation, and based upon the court's oral bench decision, which has been transcribed, is attached to this order, and is incorporated herein by reference, it is hereby

ORDERED, as follows:

- 1) Defendant's motion for judgment on the pleadings is GRANTED.
- 2) The Commissioner's determination that the plaintiff was not disabled at the relevant times, and thus is not entitled to benefits under the

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<sup>1</sup> This matter, which is before me on consent of the parties pursuant to 28 U.S.C. § 636(c), has been treated in accordance with the procedures set forth in General Order No. 18. Under that General Order once issue has been joined, an action such as this is considered procedurally, as if cross-motions for judgment on the pleadings had been filed pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

Social Security Act, is AFFIRMED.

3) The clerk is respectfully directed to enter judgment, based upon this determination, DISMISSING plaintiff's complaint in its entirety.

A handwritten signature in black ink, appearing to read "David E. Peebles", written over a horizontal line.

David E. Peebles  
U.S. Magistrate Judge

Dated: May 7, 2020  
Syracuse, NY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

-----x  
JANET V.,

Plaintiff,

vs.

1:19-CV-466

ANDREW M. SAUL, COMMISSIONER OF  
SOCIAL SECURITY,

Defendant.  
-----x

Transcript of a **Decision** held during a  
Telephone Conference on May 6, 2020, the HONORABLE  
DAVID E. PEEBLES, United States Magistrate Judge,  
Presiding.

A P P E A R A N C E S

(By Telephone)

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(315) 234-8547*

1 (The Court and Counsel present by telephone.)

2 THE COURT: Thank you. Let me begin by commending  
3 counsel for excellent written and oral presentations, I  
4 enjoyed working with you on this case.

5 Plaintiff has commenced this proceeding pursuant to  
6 42 United States Code Sections 405(g) and 1383(c)(3) to  
7 challenge a determination by the Commissioner of Social  
8 Security the plaintiff was not disabled at the relevant times  
9 and therefore ineligible for the benefits for which she  
10 applied.

11 The background concerning this case is as follows:  
12 Plaintiff was born in June of 1961. She is currently almost  
13 59 years of age. She was 52 years old at the time of the  
14 alleged onset of her disability in December 2013. Plaintiff  
15 resides in Marlboro, New York in a two-family house with  
16 children who at the time of the hearing of this matter were  
17 19 and 21 years of age and were full-time college students.  
18 She also has a rent-paying roommate in the home. She stands  
19 5 foot 2 inches in height. Plaintiff has weighed at various  
20 times anywhere between 198 pounds, at the time of the hearing  
21 in August of 2017, to 243 pounds in April of 2015. Plaintiff  
22 has a high school diploma and one year of college experience.  
23 Plaintiff has a driver's license but testified that she does  
24 not drive.

25 In terms of work, plaintiff stopped working in

1 December of 2013 due to anxiety. Prior to that time, she was  
2 employed as a production manager between July 1995 and  
3 January 2010. She left that position when she was laid off.  
4 She was an administrative assistant in a pool and patio store  
5 from May of 2012 to August of 2012, and a director of  
6 production in a manufacturing setting from August 2013 to  
7 December 2013.

8 At page 49, plaintiff testified that she is unable  
9 to work because she cannot concentrate, she cannot remember  
10 things, she cannot finish tasks. She suffers from dizziness  
11 and panic attacks. She cannot walk, cannot stand for long,  
12 cannot climb stairs, cannot lift.

13 Physically, plaintiff suffers from coronary artery  
14 disease, specifically coronary atherosclerosis of the native  
15 coronary artery, as well as GERD, chronic anemia, and type 2  
16 diabetes. The record is somewhat vague as to when it  
17 occurred, but plaintiff suffered from a myocardial infarction  
18 sometime between 2010 and 2012. On April 30, 2015, plaintiff  
19 was hospitalized and had a stent placed. It was referred to  
20 as a double vessel coronary artery disease that she was  
21 suffering from. She complained of chest pains the day before  
22 on April 29, which, interestingly, is the day she underwent  
23 the physical and psychiatric consultative examinations.

24 Mentally, plaintiff suffers from bipolar disorder,  
25 a generalized anxiety disorder, social anxiety, and rule out

1     panic disorder.

2             In terms of her treatment providers, she treated as  
3     a -- with a general practitioner Dr. Anthony Basciano, a  
4     general practitioner, beginning in or about October 2016.  
5     Her cardiology needs have been attended to by Dr. Glenn  
6     Boyar. She also treats with Dr. Margaret Apedo, an  
7     endocrinologist.

8             In terms of her mental health, plaintiff treated  
9     with Dr. Richard Altesman from 2014 to 2016, and beginning in  
10    2017 with Dr. Sukhiminder Singh. She was also consultatively  
11    examined physically by Dr. Carol McLean Long, and for  
12    psychiatric evaluation by Dr. Melissa Antiaris. Both of  
13    those occurred, as I indicated, on April 29, 2015.

14            Plaintiff has been prescribed several medications  
15    over time including atorvastatin, Brintellix, gabapentin,  
16    losartan, metoprolol, omeprazole, Metformin, Zoloft, a trial  
17    of Latuda, and at one point, Duloxetine which apparently  
18    plaintiff could not tolerate.

19            Plaintiff has a fairly wide range of activities of  
20    daily living. She watches television, reads, she can dress,  
21    bathe, groom herself, she listens to music. The record is  
22    equivocal on cooking. She stated that she is unable to cook,  
23    do laundry, shop, or take any trips at the hearing; however,  
24    at pages 264 and 269 plaintiff stated that she can cook,  
25    clean, do laundry, and can shop. Plaintiff smokes and it

1 appears that she smoked up to one pack of cigarettes per day  
2 for 30 years, that appears at 281, 256, and 258 of the  
3 administrative transcript. She apparently cut down at one  
4 point to one half-pack per day, in 2016, that's at 312, and  
5 three-quarters of a pack per day at 355. She has also smoked  
6 marijuana most of her life, according to 355 and 423 of the  
7 administrative transcript.

8 Procedurally, plaintiff applied for Title II Social  
9 Security Disability benefits on April 2, 2015. She  
10 subsequently applied for Supplemental Security Income  
11 payments on October 25, 2016 pursuant to Title XVI of the  
12 Social Security Act. In both of those applications, she  
13 alleged an onset date of December 1, 2013. At page 188, she  
14 claimed disability based on anxiety/depression, bipolar  
15 disorder, high blood pressure, and heart attack.

16 A hearing was conducted on August 23, 2017 by  
17 Administrative Law Judge Sharda Singh. ALJ Singh issued a  
18 decision on April 20, 2018 finding that plaintiff was not  
19 disabled at the relevant times and therefore ineligible for  
20 the benefits sought. That became a final determination of  
21 the agency on February 20, 2019, when the Social Security  
22 Administration Appeals Council denied plaintiff's application  
23 for review. This action was commenced on April 20, 2019, and  
24 is therefore timely.

25 In the decision, Administrative Law Judge Singh



1 applied the familiar five-step test for determining  
2 disability. The ALJ first noted that plaintiff's insured  
3 status ended on September 30, 2017. The ALJ then at step one  
4 concluded that plaintiff had not engaged in substantial  
5 gainful activity since December 1, 2013.

6 Proceeding to step two, the administrative law  
7 judge concluded that plaintiff does suffer from severe  
8 impairments that impose more than minimal limitations on  
9 ability to perform work functions, including coronary artery  
10 disease, hypertension, diabetes mellitus, obesity,  
11 generalized anxiety disorder, panic disorder, and bipolar  
12 disorder. In doing that, the administrative law judge  
13 rejected cannabis use disorder and dyslipidemia as not  
14 severe.

15 At step three the administrative law judge  
16 concluded that plaintiff's conditions do not meet or  
17 medically equal any of the listed presumptively disabling  
18 conditions set forth in the Commissioner's regulations,  
19 specifically considering Listings 4.00, 4.04, and  
20 12.04/12.06. The administrative law judge also considered  
21 plaintiff's diabetes in accordance with Social Security  
22 Ruling 14-2p, and obesity pursuant to SSR 02-1p.

23 The administrative law judge next concluded that  
24 plaintiff retains the residual functional capacity, or RFC,  
25 to perform medium work except limited to understanding,

1 remembering, and carrying out simple, repetitive, noncomplex  
2 tasks with occasional contact with supervisors, coworkers,  
3 and the general public.

4 At step four, applying that RFC, the administrative  
5 law judge concluded that plaintiff is incapable of performing  
6 her past relevant work in light of its demands and  
7 specifically it is characterized as SVP 8.

8 At step five, the administrative law judge noted  
9 first that if the Medical-Vocational Guidelines, or the  
10 so-called Grids, were applied and plaintiff were capable of  
11 performing a full range of medium work, she'd be deemed not  
12 disabled under Rules, Grid Rules 203.22 and 203.15.

13 Relying upon the testimony of the vocational expert  
14 in light of the additional nonexertional limitations set  
15 forth in the RFC, the administrative law judge concluded that  
16 plaintiff is capable of performing work in the national  
17 economy that is available, including as a hand packer, a  
18 hospital cleaner, and a sandwich maker.

19 As you know, the court's task is limited and the  
20 standard that must be applied is extremely deferential. The  
21 court must determine whether correct legal principles were  
22 applied, and whether the resulting determination and the  
23 findings of fact are supported by substantial evidence, which  
24 is defined as such relevant evidence as a reasonable mind  
25 might accept as adequate to support a conclusion. The Second

1 Circuit Court of Appeals noted in *Brault v. Social Security*  
2 *Administration*, 683 F.3d 443, from 2012, that the standard to  
3 be applied is extremely deferential. It is even more  
4 stringent than the clearly erroneous standard. In *Brault*,  
5 the Second Circuit went on to note that under that standard,  
6 the court may reject facts found by an administrative law  
7 judge only if a reasonable fact finder would have to conclude  
8 otherwise.

9 In this case, plaintiff has raised three main  
10 contentions. First, she challenges the administrative law  
11 judge's weighing of the medical opinions and specifically  
12 those of Dr. Singh, Dr. McLean Long, and Dr. Antiaris. The  
13 administrative law judge RFC finding is also challenged as  
14 not supported by substantial evidence, and the issue is  
15 raised that there is a gap in the record presented by  
16 rejection of Dr. Singh's opinion, and also, part and parcel  
17 of that is the alleged inconsistency with Dr. McLean Long's  
18 opinion.

19 Turning first to the weight of medical evidence,  
20 generally speaking, under *Veino*, it is the prerogative of the  
21 administrative law judge to weigh medical opinions and  
22 evidence in the record.

23 Turning first to Dr. Antiaris, Dr. Antiaris  
24 examined the plaintiff and issued the following medical  
25 source statement at page 265 of the administrative

1 transcript. The -- Dr. Antiaris found no limitations in the  
2 claimant's ability to follow and understand simple directions  
3 and instructions or perform simple tasks independently. She  
4 is mildly limited in her ability to maintain attention and  
5 concentration, there are no limitations in the claimant's  
6 ability to maintain a regular schedule, learn new tasks,  
7 perform complex tasks independently, make appropriate  
8 decisions, or relate adequately to others. She is moderately  
9 limited in her ability to appropriately deal with stress,  
10 difficulties are caused by lack of motivation. On page 264,  
11 Dr. Antiaris found that plaintiff's thought processes were  
12 coherent and goal directed with no evidence of  
13 hallucinations, delusions of paranoia. She went on to find  
14 that in the area of attention and concentration, plaintiff  
15 was mildly impaired due to concentration difficulties.  
16 Recent and remote memory skills were found to be intact,  
17 cognitive functioning was judged to be in the average range,  
18 insight fair and judgment fair.

19 The administrative law judge carefully, at pages 21  
20 and 22, examined the opinion of Dr. Antiaris. The  
21 administrative law judge did acknowledge the moderate  
22 limitation on stress, and I find that residual functional  
23 capacity in that arena is well supported and accounted for in  
24 the residual functional capacity. The Commissioner has cited  
25 *Jackson v. Commissioner of Social Security* at 2019 WL

1 4926434, it's a decision from the Western District of  
2 New York. In that case Magistrate Judge Michael J. Roemer  
3 noted that where an ALJ concluded that plaintiff was limited  
4 to simple routine repetitive tasks and that she was capable  
5 of performing unskilled work, that is sufficient to account  
6 for a moderate limitation in dealing with stress.

7 Turning to Dr. Ferrin, Dr. Ferrin, a nonexamining  
8 consultant, on June 30, 2015 issued the following MRFC,  
9 mental residential functional capacity, opinion. Claimant  
10 has severe impairment and despite some limitations is able to  
11 follow ordinary routine, socialize with others, and adapt to  
12 changes in workplace. The administrative law judge discussed  
13 Dr. Ferrin's opinion at page 22. It was accepted, although  
14 with additional limitations, and those are supported by  
15 substantial evidence. I note that Dr. Ferrin's opinions are  
16 supported by the treatment notes of Dr. Singh as well as  
17 Licensed Clinical Social Worker Greddy Abraham and  
18 Dr. Richard Altesman. As I indicated previously, it is for  
19 the administrative law judge to weigh medical opinions. I  
20 think it was properly weighed in this case.

21 The argument with regard to passage of time I  
22 understand, and for practical reasons in many of these cases  
23 there is a fairly substantial period of time that passes  
24 between a consultative exam and the time of an administrative  
25 law judge's decision. That alone, however, does not

1     undermine the usefulness and the reliance upon such a  
2     consultative examination, particularly as in this case where  
3     notes do not reflect any significant deterioration in  
4     condition.

5             In terms of Dr. Singh, Dr. Singh is of course in a  
6     different category. He was treated by the administrative law  
7     judge as a treating source. His opinions were discussed in  
8     detail at pages 21 through 23 of the administrative  
9     transcript. As a treating source under the regulations that  
10    were in effect at the time, he is -- his opinions were  
11    entitled to considerable deference unless not consistent with  
12    other substantial evidence. And specifically, such opinions  
13    are not controlling if they are contrary to other substantial  
14    evidence in the record, including opinions of other medical  
15    experts. *Halloran v. Barnhart*, 362 F.3d 28, pin cite 32 from  
16    the Second Circuit 2004. If there is contradictory medical  
17    evidence in the record, the resolution of such a conflict is  
18    entrusted to the Commissioner. *Burgess v. Astrue*, 537 F.3d  
19    117 at 128 from Second Circuit 2018 -- I'm sorry, 2008.  
20    Obviously, if a treating source's opinions are rejected,  
21    explanation must be made and it must be supported by  
22    substantial evidence.

23             In this case, Dr. Singh's medical capacity  
24    assessment rendered on July 24, 2017 at pages 407 through 412  
25    of the administrative transcript, one would have to

1 acknowledge is extremely limited -- limiting. He notes an  
2 extreme limitation of virtually all of the areas addressed in  
3 that, in that questionnaire. As the administrative law judge  
4 noted, the opinions and the serious limitations reflected are  
5 at odds with Dr. Singh's own treatment notes. At page 424,  
6 Dr. Singh notes that plaintiff's memory is intact, attention  
7 and concentration are intact, at page 460 -- 425, executive  
8 functioning intact, again at page 428, memory intact,  
9 judgment intact, insight intact, attention and concentration  
10 intact. Again, at page 437, memory intact, reasoning, normal  
11 reasoning, attention and concentration intact, executive  
12 functioning intact. As the administrative law judge noted,  
13 Dr. Singh at one point in July of 2017 at page 431 assigned a  
14 Global Assessment of Functioning, or GAF score, of 60. Under  
15 the DSM-IV, which of course is no longer in use, GAF of 60  
16 signifies moderate symptoms or moderate difficulty in social,  
17 occupational, or school functioning. Certainly seems to be  
18 inconsistent with Dr. Singh's very limiting report. At 431,  
19 it was also noted that, by Dr. Singh that plaintiff was doing  
20 well on Zoloft. The administrative law judge considered that  
21 plaintiff was only examined twice by Dr. Singh prior to  
22 rendering his opinion. The administrative -- the activities  
23 of daily living are not as limiting as plaintiff's testimony.  
24 The administrative law judge noted that plaintiff was able to  
25 drive to Georgia in 2015, that appears at 375 of the

1 administrative transcript, and in May of 2016 was noted to be  
2 driving, that's at page 365 of the administrative transcript.  
3 The administrative law judge did consider Dr. Singh is a  
4 specialist but concluded that his opinions are not supported.  
5 I find that the treatment of Dr. Singh's opinions was  
6 adequately explained and supported by substantial evidence.

7 Turning to Dr. Long, Dr. Long -- I'll call her  
8 Dr. McLean Long, I'm not sure if that's accurate, found based  
9 on her examination of the plaintiff at page 271 that there is  
10 no limitation in the claimant's ability to sit, stand, climb,  
11 push, pull, or carry heavy objects. She did go on to note  
12 that there is a mild limitation from activities requiring  
13 mild or greater exertion because of her cardiac history. The  
14 administrative law judge rejected that second sentence  
15 because it was vague, not supported, and it did not provide  
16 any functional information. The first sentence clearly  
17 supports a medium, medium RFC. The RFC of course being  
18 defined as the range of tasks she is capable of performing  
19 notwithstanding the impairments at issue, 20 C.F.R. Sections  
20 404.1545 and 416.945, *Tankisi v. Commissioner of Social*  
21 *Security*, 521 F.App'x 29. An RFC has to be informed by  
22 consideration of only the medical, relevant medical and other  
23 evidence. I note also once again that it is plaintiff's  
24 burden to establish her limitations up through step four and  
25 that includes at the RFC level. Dr. McLean Long's opinion



1 was discussed at pages 19 and 20 of the administrative law  
2 judge's decision, portion of it were rejected. I find that  
3 the administrative law judge's treatment of Dr. McLean Long's  
4 opinion was supported by substantial evidence.

5 So again, coming back to the residual functional  
6 capacity and plaintiff's burden to establish her capacity,  
7 the mere fact that she was working in a sedentary position  
8 previously does not necessarily mean she is incapable of  
9 performing at the medium work exertional level. Medium work  
10 of course under SSR 83-10 is defined as lifting no more than  
11 50 pounds at a time with frequent lifting or carrying of  
12 objects weighing up to 25 pounds. The full range of medium  
13 work requires standing or walking off and on for a period of  
14 approximately eight -- six hours in an eight-hour workday in  
15 order to meet the requirements of frequent lifting or  
16 carrying of objects up to 25 pounds, and it goes on to make  
17 additional observations regarding medium work. The ability  
18 to perform medium work in this case is supported by the  
19 consultative examination of Dr. McLean Long. There's no  
20 evidence of subsequent deterioration. The administrative law  
21 judge did note there was stenting but, as the Commissioner  
22 has argued, the evidence concerning plaintiff's heart  
23 condition following the stenting does not support a finding  
24 of deterioration. Physical exams of the plaintiff, as the  
25 administrative law judge notes, were largely unremarkable.

1 The mental portion of the RFC finding is supported as I  
2 indicated before by Dr. Antiaris' opinion, and Dr. Singh's  
3 medical source statement was properly rejected.

4 The Commissioner -- the plaintiff has argued that  
5 the RFC did not account for the moderate limitations found as  
6 part of the step three analysis at page 15 of the  
7 administrative transcript but the step three and the  
8 so-called B criterion drops out and is not relevant to the  
9 RFC finding once the step three analysis has been concluded.

10 In terms of the gap, plaintiff alleges that there  
11 is a gap in the record once Dr. Singh's opinion was rejected,  
12 but there is also the consultative examination of  
13 Dr. Antiaris and the nonexamining opinions of Dr. Ferrin  
14 which supply the required substantial evidence concerning  
15 plaintiff's mental capacity portion of the RFC.

16 So I think I've addressed all of the arguments that  
17 were raised by the plaintiff. I conclude that proper legal  
18 principles were applied, that the treatment of the various  
19 medical opinions was supported by substantial evidence, and  
20 that the resulting determination is also supported by  
21 substantial evidence, so I will grant judgment on the  
22 pleadings to the defendant, dismissing plaintiff's complaint.

23 Once again, thank you both for excellent  
24 presentations, I wish you well, stay safe. Thank you.

25 MS. GOTTESMAN: Thank you, your Honor.

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MR. PARRINGTON: Thank you, your Honor.  
(Proceedings Adjourned, 12:05 p.m.)

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CERTIFICATE OF OFFICIAL REPORTER

I, JODI L. HIBBARD, RPR, CRR, CSR, Federal  
Official Realtime Court Reporter, in and for the  
United States District Court for the Northern  
District of New York, DO HEREBY CERTIFY that  
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the United States.

Dated this 6th day of May, 2020.

/S/ JODI L. HIBBARD

JODI L. HIBBARD, RPR, CRR, CSR  
Official U.S. Court Reporter